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Supreme Court of the United States

OCTOBER TERM, 1948

No. 263

SHULIM WIXMAN, also known as SAMUEL MORRIS WIXMAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE,* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Amicus Curiae.

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Preliminary Statement

This brief in support of the petition for a writ of certiorari is filed by the American Civil Liberties Union *amicus curiae* because of its concern for the apparent denial of civil rights to the petitioner by reason of the lower court's refusal to grant his petition for naturalization solely because of his economic beliefs and teachings.

As the case is fully stated in the petition for certiorari, we shall omit from this brief any formal statement of the facts, the statute involved, and opinions below, for which reference is made to the petition.

Question Presented

The question presented here is whether the petitioner is attached to the principles of the constitution and well disposed to the good order and happiness of the United States, as required for naturalization under Section 307a of the Nationality Code, in view of his belief that the capitalistic economic system requires some modification in the direction of socialization or collective control of industry.

The courts below held that by reason of such economic views the petitioner failed to fulfill the requirements above stated and denied his petition for naturalization.

POINT I

The courts below erred in finding that the petitioner lacked the requirements for naturalization solely because he favored the economic theories of Socialism or Collectivism.

The District Court found that the petitioner was not attached to the principles of the constitution and not well disposed to the good order and happiness of the United States as required by the naturalization laws because of the views which he had expressed as a teacher of economics in Los Angeles City College. The district judge explained (R. 236) that his decision was based on the text of a lecture which petitioner had delivered before the faculty and students of the college and the testimony of various students and teachers concerning petitioner's reputation as a "Red". The petitioner was questioned at length concerning the lecture (R. 192 *et seq.*) and particularly his exposition of the transition from capitalism to collectivism. The petitioner pointed out (R. 203) that his statement of the development of a collectivist state

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was merely an explanation of the working of the collectivist theory according to its proponents and that petitioner himself did not champion such a theory. He stated (R. 205) that he favored the retention of capitalism with increased "socialization" at various points. Although the petitioner and many of his intimates denied emphatically that he was a Communist, there was testimony from several students and professors at the college that he had the reputation of being a radical. One professor said (R. 97) that there was a wide-spread belief on the campus among the students that he was a "Red". Students testified that he stressed collectivism in his lectures as against individualism (R. 56), that he favored socialism over capitalism (R. 66), that he favored Communism (R. 70) and recommended the reading of Das Kapital by Karl Marx (R. 73).

In every case, however, the foregoing testimony consisted of conclusions formed by the witnesses about the petitioner's beliefs rather than direct reference to expression of such beliefs. Moreover, in describing the petitioner as a "Red" or "Socialist" the witnesses did not define those terms. The unfavorable testimony against the petitioner amounts to little more than a vague belief among some of his students and associates that he was a radical in economic matters.

Counteracting such testimony the petitioner introduced a mass of positive evidence that he was an enthusiastic supporter of the American constitution and way of life, that he was not a Communist, that he subscribed entirely to the constitution, but favored merely modification of the capitalistic system to permit a greater degree of socialization of industry and utilities affected with a public interest. A reading of the entire record shows that the petitioner fully supported the constitution and political system of the United States, that his radicalism is entirely

in the field of economics and is not more radical than economic theories which have been widely espoused in recent years in this country.

The petitioner is no more radical in economics than proponents of the New Deal who recently controlled our government. He is no more radical than the socialists who control the governments of England, France and most other "democracies". He is violently opposed to Communism, Fascism, and a supporter of Democratic government.

It appears, therefore, that the petitioner has been denied naturalization not because he lacks attachment to the constitution as a political framework, or fails in loyalty to the laws and democratic institutions of the United States, but merely because he is or was a "Collectivist," who believes that capitalism cannot be successful without increased socialization of industry.

The petitioner cannot be said to lack attachment to the constitution unless the constitution embodies the economic theories of Adam Smith and permits no other system than the unbridled free enterprise of the 19th Century.

Obviously the constitution does not sanction any particular economic system. It is a political document within which many forms of economics may operate. The constitution is not incompatible with modern socialism and collectivism. It neither sanctions free enterprise nor condemns collective control. It imposes no economic pattern upon the United States.

A disposition toward the good order and happiness of the United States does not require a belief in the efficacy of *laissez faire* economics. To insist that socialism or collectivism are detrimental to the happiness of the United States would be to place a straitjacket upon economic evolution and to ignore the tremendous increase in social

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control of industry which has won popular acceptance in the last few decades.

In excluding the petitioner from naturalization the courts below have fallen into the error of assuming that particular economic views are somehow embodied in the constitution and necessary to the happiness of the United States and have concluded that people holding different views are not desirable as citizens. As this court has pointed out in *Schneiderman* v. *U. S.* (320 U. S. 118), the constitution does not embody any economic theory and it cannot be doubted that many persons are attached to it who favor government ownership and control of basic resources and means of production. The record below is completely barren of any evidence to show that the petitioner is not attached to the principles of the constitution and well disposed to the good order and happiness of the United States as those requirements are popularly understood and previously interpreted by this court.

CONCLUSION

The petition for certiorari should be granted and the case remanded to the court below with directions to grant the petition for naturalization.

Respectfully submitted,

American Civil Liberties Union,
Amicus Curiae.

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Dated: October 13, 1948.